



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/775,760	02/09/2004	Erik B. Christensen	MS1-1863US	8719
22801	7590	06/19/2009		
LEE & HAYES, PLLC 601 W. RIVERSIDE AVENUE SUITE 1400 SPOKANE, WA 99201			EXAMINER PANNALA, SATHYANARAYA R	
			ART UNIT 2164	PAPER NUMBER
			MAIL DATE 06/19/2009	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/775,760

**Applicant(s)**

CHRISTENSEN ET AL.

**Examiner**

Sathyannarayan Pannala

**Art Unit**

2164

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 27 February 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-15 and 25 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 2-15 and 25 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-8508)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Response to Amendment***

1. Applicant's Amendment filed on 2/12/2009 has been entered with amended claims 1, 11 and cancelled claim 2. In this Office Action, claims 1-15 and 25 are pending.
2. Applicant withdrawn claims in response must be cancelled/removed from the claims listing to avoid further confusion.

### ***Claim Objections***

3. Claim 4 is objected for minor error in the claim as "streaming the data structure." Applicant should rewrite the claim as "streaming the data of the data structure." Appropriate correction is required.

### ***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

5. Claims 1, 3-15 and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Walker (US Patent 6,665,729) hereinafter Walker, and in view of Wookey et al. (USPA Pub. US 2004/0001514 A1) hereinafter Wookey.
6. As per independent claim 1, Walker teaches to compensate for limitations that arise when a transaction-based protocol is used together with stream based protocol, the stream-based protocol is modified to take advantages of certain characteristics of transaction-based protocols (col. 2, lines 50-54). Walker teaches the claimed, determining a size of a data structure (Fig. 3-4, col. 4, lines 50-54 and col. 5, lines 17-21). Walker does not explicitly teach bulk data protocol. However, Wookey teaches the claimed, selecting a data streaming protocol when the size exceeds a predetermined limit (examiner interpreting data stream protocol as bulk data protocol) (page 20, paragraph [0297]). Thus, it would have been obvious to one of ordinary skill in the data processing art at the time of the invention, to have combined the teachings of the cited references because Wookey's teachings would have allowed Walker's method to eliminate the confusing issue of which services to use, why the services are

different and to facilitate the user with a single integrated service by the service provider. (page 1, paragraph [0007]). Walker teaches the claimed, selecting a buffered protocol when the size does not exceed the predetermined limit, and sending to a client computing device, data of the data structure consistent with the buffered protocol when a predetermined time interval has elapsed (Wookey stream protocol same as bulk data protocol when the data size exceeds predetermined size otherwise Walker uses buffer protocol) (Fig. 3, col. 4, lines 50-67 and col. 1, lines 49-53).

7. As per dependent claim 3, Walker teaches the claimed, the selecting the buffered data protocol further comprises including an end of data indicator for denoting when a data transmission vehicle is no longer in use (Fig. 3, col. 4, lines 65-67).

8. As per dependent claim 4, Walker and Wookey combined teaches claim 1. Wookey teaches the claimed, selecting a data streaming protocol further comprising streaming the data structure by: streaming a header, streaming the data structure and streaming an acknowledge code (Fig. 12, page 8, paragraph [0123]).

9. As per dependent claim 5, Walker teaches the claimed, the selecting the data streaming protocol further comprises streaming the data structure by buffering a first portion of the data structure and streaming a second portion of the data structure (Fig. 3, col. 3, lines 56-59).

10. As per dependent claim 6, Walker and Wookey combined teaches claim 1.

Wookey teaches the claimed, selecting a data transmission vehicle from a pool of available data transmission vehicles (page 3, paragraph [0046]).

11. As per dependent claim 7, Walker and Wookey combined teaches claim 1.

Wookey teaches the claimed, selecting a data transmission connection from a pool of available data transmission connections using round robin selection (Fig. 5, page 6, paragraph [0099]).

12. As per dependent claim 8, Walker teaches the claimed, formatting the data structure in accordance with at least one protocol chosen from a group consisting of: simple mail transfer protocol, POP3, hyper text transfer protocol, file transfer protocol and transfer control protocol/Internet protocol (col. 5, line 4).

13. As per dependent claim 9, further comprising using a transport vehicle for data transmission chosen from a group consisting of: HTTP transport, TCP transport, InterProcess Transport, InProcess Transport, SMTP transport and POP3 Transport (col. 5, line 4).

14. As per dependent claim 10, Walker teaches the claimed, selecting a transmission scheme chosen from a group consisting of: HTTP, SOAP.TCP, NET.TCP,

MS.SOAP.XPROC, NET.IPC, MS.SOAP.INPROC, NET.INAPPDOMAIN, SOAP.MAIL, NET.MAIL and POP (col. 5, line 4).

15. As per independent claim 11, Walker teaches to compensate for limitations that arise when a transaction-based protocol is used together with stream based protocol, the stream-based protocol is modified to take advantages of certain characteristics of transaction-based protocols (col. 2, lines 50-54). Walker teaches the claimed, processing data from memory (Fig.3, col. 4, lines 54). Walker teaches the claimed, determining a size of a data structure (Fig. 3-4, col. 4, lines 50-54 and col. 5, lines 17-21). Walker does not explicitly teach bulk data protocol. However, Wookey teaches the claimed, selecting a data streaming protocol when the size exceeds a predetermined limit and means for sending the data structure using the data streaming protocol (examiner interpreting data stream protocol as bulk data protocol) (page 20, paragraph [0297]). Thus, it would have been obvious to one of ordinary skill in the data processing art at the time of the invention, to have combined the teachings of the cited references because Wookey's teachings would have allowed Walker's method to eliminate the confusing issue of which services to use, why the services are different and to facilitate the user with a single integrated service by the service provider (page 1, paragraph [0007]). Walker teaches the claimed, selecting a buffered data protocol when the size does not exceed the predetermined limit and sending the data structure using the buffered data protocol when predetermined time interval has elapsed (Wookey stream protocol same as bulk data protocol when the data size exceeds

Art Unit: 2164

predetermined size otherwise Walker uses buffer protocol) (Fig. 3, col. 4, lines 50-67, col. 2, lines 45-46 and col. 1, lines 49-53).

16. As per dependent claim 12, Walker teaches the claimed, the determining further comprises comparing the size to the predetermined limit (Fig. 3, col. 4, lines 50-54).

17. As per dependent claim 13, Walker and Wookey combined teaches claim 1. Wookey teaches the claimed, prefacing the data structure with addressing information and means for denoting an end-of-message (Fig. 14, page 11-12, paragraph [0163] & [0176]).

18. As per dependent claim 14, Walker teaches the claimed, for exchanging information expressive of buffer size (col. 1, lines 57-61).

19. As per dependent claim 15, Walker teaches the claimed, buffering a first portion of the data structure and means for streaming a second portion of the data structure (Fig. 3, col. 3, lines 56-59).

20. As per independent claim 25, Walker teaches to compensate for limitations that arise when a transaction-based protocol is used together with stream based protocol; the stream-based protocol is modified to take advantages of certain characteristics of transaction-based protocols (col. 2, lines 50-54). Walker teaches the claimed,



Art Unit: 2164

determining a size of a data structure (Fig. 3-4, col. 4, lines 50-54 and col. 5, lines 17-21). Walker does not explicitly teach bulk data protocol. However, Wookey teaches the claimed, selecting a data streaming protocol when the size exceeds a first predetermined limit, (examiner interpreting data stream protocol as bulk data protocol) (page 20, paragraph [0297]). Thus, it would have been obvious to one of ordinary skill in the data processing art at the time of the invention, to have combined the teachings of the cited references because Wookey's teachings would have allowed Walker's method to eliminate the confusing issue of which services to use, why the services are different and to facilitate the user with a single integrated service by the service provider. (page 1, paragraph [0007]). Walker teaches the claimed, selecting a buffered data protocol when the size does not exceed the first predetermined limit, and sending data of the data structure consistent with the buffered protocol when the data structure reaches a second predetermined size limit and system resources are available (Wookey stream protocol same as bulk data protocol when the data size exceeds predetermined size otherwise Walker uses buffer protocol) (Fig. 3, col. 4, lines 50-67, col. 2, lines 45-46 and col. 1, lines 49-53).

### ***Response to Arguments***

21. Applicant's arguments filed on 2/12/2009 have been fully considered but they are not persuasive and details as follows:

a) Applicant's argument stated as "It is respectfully submitted that the Applicant may be its own lexicographer with regard to using particular claim terminology and defining its corresponding meaning in the specification."

In response to Applicant argument, Examiner agrees and withdrawn the specification objection.

b) Applicant's argument regarding 35 U.S.C. 112, second paragraph stated as "Applicant hereby amending the claims 11 and 25 in the manner set forth."

In response to Applicant argument, Examiner agrees and withdrawn the rejection based on the amendment.

c) Applicant's argument stated as that the Wookey et al. (USPA Pub. 2004/0001514) is not included.

In response to Applicant argument, Examiner agrees and a new Form 892 is attached with a listing of both used references, 'Walker (US Patent 6,665,729) and Wookey et al. (USPA Pub. 2004/0001514).

d) Applicant's argument regarding claims 1-10 rejection under 35 U.S.C. 101, stated as "Applicant hereby amends independent Claim I in the manner set forth."

In response to Applicant argument, Examiner agrees and withdrawn the rejection based on the amendment.

e) Applicant's argument regarding claims rejection under 35 U.S.C. 103, stated as "More particularly, it is submitted that neither reference teaches or suggests 'determining a size of a data structure' as presently recited."

In response to Applicant argument, Examiner respectfully disagrees.

Because Walker do teach this limitation as it examines the pocket header to determine the size and other information. (see Fig. 4, col. 5, lines 17-21).

f) Applicant's argument stated as "Lastly, Applicant respectfully submits that both Walker and Wookey ail to teach or suggest "selecting a buffered data protocol when the size does not exceed the predetermined limit and sending," as presently recited in Claim 1."

In response to Applicant's argument, Examiner disagrees. Because Walker does teach as based on the type of protocol selected the data is transmitted (Fig. 4, col. 5, lines 17-21). As Applicant earlier agreed that Wookey teaches sending two types of information and one of them is a **Bulk data type**. It clearly indicates a decision is taken before sending the bulk data. Further, Bulk data protocol must be dealt in order to send bulk data. Therefore, Wookey teaches missing part disclosed by Walker. Wookey determines the data structure size and whenever it exceeds the predetermined size and sends the data using streaming protocol. Otherwise, Walker uses the buffer protocol to send the data. There is no need of checking twice as Applicant tried to overcome prior art by amending the claims. A recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

***Conclusion***

22. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

***Contact Information***

23. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sathyanarayan Pannala whose telephone number is (571) 272-4115. The examiner can normally be reached on 8:00 am - 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Charles Rones can be reached on (571) 272-4085. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 2164

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only.

For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Sathyanarayan Pannala/  
Primary Examiner, Art Unit 2164

srp  
June 15, 2009